

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Michael McGann

v.

Case No. 05-cv-84-PB

The State of NH  
Legislature, et al.

ORDER

Re: Document No. 8, Motion to Dismiss

**Ruling:** Plaintiff's claims are based upon the contention that he was wrongfully imprisoned beyond his maximum release date. He thus asserts a substantive challenge to the sentence under which he was incarcerated. As defendant notes, such claims are barred by Heck v. Humphrey, 512 U.S. 477, 487 (1994), to the extent that they necessarily imply the invalidity of an otherwise valid sentence. Plaintiff was unable to have his sentence vacated in a habeas corpus proceeding. Moreover, plaintiff may not avoid Heck merely because he is no longer incarcerated. See Figueroa v. Rivera, 147 F.3d 77, 81 n.3 (1st Cir. 1998). Accordingly, I am obligated by Supreme Court and First Circuit precedent to grant defendants' motion to dismiss.

/s/ Paul Barbadoro  
Paul Barbadoro  
District Judge

Date: October 4, 2005

cc: Daniel J. Mullen, Esq.  
Michael McGann, pro se